

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KELLY BENNETT,

Plaintiff,

-against-

Civil Action No. 1:09-cv-1176
(GLS/ATB)

STERLING PLANET, INC.,

Defendant.

PLAINTIFF KELLY BENNETT'S MOTION *IN LIMINE*

Plaintiff Kelly Bennett ("Plaintiff") respectfully moves this Court for an Order *in limine* precluding Defendant Sterling Planet, Inc. ("Defendant") from offering at trial (1) testimony by persons other than Melvin Jones relating to the items listed in Plaintiff's Rule 30(b)(6) Notices of Deposition; (2) evidence that contradicts the gross profit figures and stipulated to profit margins for the renewable energy contracts upon which Plaintiff seeks to recover commissions, which figures Defendant provided in discovery; and (3) certain proposed Exhibits.

Defendant is limited to the testimony of its Rule 30(b)(6) witness Mr. Melvin Jones, whom Defendant identified as the individual who could provide "complete, knowledgeable and binding answers" on its behalf regarding the topics and issues identified by Plaintiff in her Deposition Notice.

Defendant is precluded from offering any testimony or evidence that contradicts its previous responses to Plaintiff's Interrogatory Request #4 regarding the total gross profit for

each customer contract or transaction for which Plaintiff seeks to recover commissions in this matter.


Finally, Defendant is precluded, pursuant to FRCP 37(c) and Federal Rules of Evidence, from offering certain exhibits that (1) it failed to disclose during discovery; (ii) are not relevant to the claims and defenses asserted in this matter; (iii) fail to satisfy the best evidence rule of the Federal Rules of Evidence; and/or (iv) failed to provide to Plaintiff during the course of her employment that Defendant.

In support of her motion, Plaintiff contemporaneously files the following:

1. Plaintiff's Memorandum of Law in Support of Motion *In Limine*;
2. Affidavit of Michael Wallender, with exhibits; and,
3. Affidavit of Kelly Bennett, with exhibits.

Dated: Albany, New York
May 31, 2012

COUCH WHITE LLP



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